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August 30, 2010

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Preserving the Open Internet*, GN Docket No. 09-191; *Framework for Broadband Internet Service*, GN Docket No. 10-127

Dear Ms. Dortch:

Throughout the debate over net neutrality regulation, proponents of the most radical forms of net neutrality have claimed that “paid prioritization” of Internet traffic is inconsistent with Internet standards, is not taking place today, and, if permitted, would be a viable option only for a few select “content giants that have deep enough pockets” to pay for it, to the exclusion of smaller and minority-owned businesses and non-profits. Most recently, Free Press repeated these claims in two *ex parte* letters challenging the Minority and Media Telecom Council (MMTC) for arguing that paid prioritization could provide minority-owned businesses with additional, cost-effective options for improving the quality of their performance-sensitive content and applications.<sup>1</sup> But while Free Press filed those letters purportedly to “revisit the basic facts” regarding paid prioritization, Free Press is actually quite confused about those facts. Contrary to its claims, paid prioritization is *expressly* contemplated by the Internet Engineering Task Force (IETF), the Internet standard-setting organization; it is widely available from multiple providers today; and, no less important, *it is used by many businesses of all sizes*. Indeed, *the substantial majority* of the hundreds of customers that purchase paid prioritization today from AT&T are small and medium businesses, including those that are minority-owned or provide important services to minority communities. Banning paid prioritization services, as Free Press proposes, would be a colossal mistake that would harm countless businesses and their customers.

## **I. Paid Prioritization is Expressly Contemplated by the IETF**

Nearly three decades ago, the IETF first included a “type of service” field within the Internet Protocol to enable prioritization of real-time and other performance-sensitive applications.<sup>2</sup> It updated that capability in 1998 by creating the “differentiated service code point” field, generally referred to as “DSCP” or DiffServ.

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<sup>1</sup> Letter from David Honig, MMTC, to Marlene Dortch, FCC, GN Docket No. 09-191 (July 28, 2010); Letter from David Honig, MMTC, to Marlene Dortch, FCC, GN Docket No. 09-191 (Aug. 2, 2010); Letter from S. Derek Turner, Free Press, to Marlene Dortch, FCC, GN Docket No. 09-191 (July 28, 2010) (Free Press July Letter); Letter from S. Derek Turner, Free Press, to Marlene Dortch, FCC, GN Docket No. 09-191 (Aug. 3, 2010) (Free Press August Letter).

<sup>2</sup> RFC 2474 at 7 (discussing RFC 791), available at <http://tools.ietf.org/pdf/rfc2474.pdf>.

In its August letter to MMTC, Free Press acknowledges that DiffServ is a standardized mechanism for prioritization of packets. It even claims to support the use of DiffServ.<sup>3</sup> It asserts, however, that DiffServ permits only *end users*, not ISPs or content providers, to mark packets for prioritization.<sup>4</sup> Indeed, Free Press further asserts that it would be “nonsensical to portray DiffServ as something that a third-party content provider could pay an ISP to use for paid-prioritization.”<sup>5</sup>

This is just flatly wrong. RFC 2474, which as Free Press acknowledges, is the IETF document that created and describes DiffServ, in no way limits the use of DiffServ to packets marked by “end users,” as opposed to content providers or network operators. To the contrary, RFC 2474 expressly states that “it is the responsibility of [the] *network* to control the access to, and use of, [the] precedence designations” for DiffServ.<sup>6</sup> And it states, further, that networks “are free to configure the node parameters [for DiffServ] in *whatever way that is appropriate for their service offerings and traffic engineering objectives.*”<sup>7</sup>

Free Press also is wrong when it claims that DiffServ “cannot legitimately be used to facilitate paid prioritization.”<sup>8</sup> As explained in RFC 2474, “the primary goal of differentiated services is to allow different levels of service to be provided for traffic streams on a common network infrastructure.”<sup>9</sup> RFC 2475, which defines the architecture for implementing DiffServ

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<sup>3</sup> See Free Press July Letter at 2. This statement of support for DiffServ by Free Press is at odds with its oft-repeated prior assertion that any form of router-based prioritization should be prohibited because such prioritization is a “zero-sum game” that harms consumers by speeding up some packets at the expense of degrading others. *Dismantling Digital Deregulation*, Free Press, at 76 (May 2009), available at [http://www.freepress.net/files/Dismantling\\_Digital\\_Deregulation.pdf](http://www.freepress.net/files/Dismantling_Digital_Deregulation.pdf). Of course, *that* assertion, like Free Press’ characterization of DiffServ in its August letter, is itself misinformed. As AT&T and others have previously demonstrated, router-based prioritization is *not* a “zero-sum” game. See AT&T Reply Comments, GN Docket No. 09-191, at 6-8, 49-53, 60-64 (April 26, 2010). Nor is Free Press correct when it maintains that “geographic prioritization” – the term Free Press uses to describe the functions of content delivery networks (CDNs) – does not reduce bandwidth available for other traffic on the Internet. As shown in a recent study, such geographic prioritization does reduce available bandwidth for other traffic and, further, router-based prioritization actually can reduce jitter caused by CDN-based services. See George Ou, *Data shows CDN prioritization more harmful than router prioritization*, Digital Society (Aug. 10, 2010), available at <http://www.digitalsociety.org/2010/08/data-shows-cdn-prioritization-more-harmful-than-router-prioritization/>

<sup>4</sup> Free Press August letter at 3. Free Press also claims, without support, that AT&T’s use of DiffServ to prioritize video traffic in our U-verse IPTV service is a “non-standard use of DiffServ” because AT&T, rather than its end users, establishes the priority markings for that video traffic.

<sup>5</sup> *Id.*

<sup>6</sup> RFC 2474 at 8 (emphasis added).

<sup>7</sup> *Id.* at 14 (emphasis added). See also *Id.* at 8-9 (stating that it is the responsibility of the network operator to “re-mark” traffic entering its network to enable the services it desires to provide).

<sup>8</sup> Free Press August Letter at 2.

<sup>9</sup> RFC 2474 at 15.

and is referenced extensively in RFC 2474, further expounds on the purpose of DiffServ: “The history of the Internet has been one of continuous growth in the number of hosts, the number and variety of applications, and the capacity of the network infrastructure, and this growth is expected to continue for the foreseeable future. A scalable architecture for service differentiation must also be able to accommodate this continued growth.”<sup>10</sup> To facilitate the continued growth of the Internet, RFC 2475 states that “[s]ervice differentiation is desired to accommodate heterogeneous application requirements and user expectations, *and to permit differentiated pricing of Internet service.*”<sup>11</sup> In short, one of the fundamental reasons that the IETF created DiffServ was to facilitate paid prioritization as a means for encouraging the further growth and development of the Internet. Free Press’ contrary claims – which notably fail to draw upon any of the IETF source documents – are simply incorrect.

## **II. Paid Prioritization Services Are Widely Offered in the Marketplace Today and they are Used by Large and Small Customers.**

Free Press is wrong not only in its characterization of DiffServ, but also in its claim that “DiffServ, despite being formally proposed over a dozen years ago, is not currently used” by Internet service providers.<sup>12</sup> And Free Press errs yet again when it states that “[p]aid prioritization on the open Internet -- which is *not* yet taking place -- will be a disaster for small businesses and new entrepreneurs hoping to compete with today’s Internet giants” because ISPs will only offer it to a “few select industry giants with big brands.”<sup>13</sup> The undeniable fact is that paid prioritization of traffic over Internet access service is available in the market today and it is subscribed to by numerous small and medium businesses, including those operated by minorities or serving minority communities.

As an initial matter, it is odd in the extreme for Free Press even to claim that “it would be a stunning new revelation if it were true that ISPs are currently offering third-party paid prioritization services.”<sup>14</sup> Free Press *knows* or certainly should know that ISPs are offering paid prioritization today. Indeed, in the very same August 3 letter in which Free Press insists this is not the case, it quotes the following passage from AT&T’s opening comments in which AT&T notes that it and other network providers are currently using DiffServ and related mechanisms to offer paid prioritization to business customers:

AT&T offers an *enterprise-grade Internet access service*, known as Managed Internet Service (“MIS”), *that combines DiffServ and MPLS-based class-of-service mechanisms* to ensure enhanced performance for traffic that MIS customers designate for special handling. AT&T and other network providers *sell*

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<sup>10</sup> RFC 2475 at 8, available at <http://tools.ietf.org/pdf/rfc2475.pdf>.

<sup>11</sup> *Id.* at 3 (emphasis added).

<sup>12</sup> Free Press August Letter at 2.

<sup>13</sup> Free Press July Letter at 2 (emphasis in original).

<sup>14</sup> *Id.*

*such services* to a range of enterprise customers, including content providers that wish to *purchase prioritized handling* for performance-sensitive content throughout their core network facilities.<sup>15</sup>

This business-class Internet access service is not, as Free Press alleges, restricted to facilities “within enterprise networks to manage internal traffic flows.”<sup>16</sup> Rather, customers of this service (which include businesses that generate Internet content) use DiffServ to mark packets for prioritization, including packets destined for other networks on the Internet.<sup>17</sup> Indeed, the RFC states that “[d]ifferentiated service enhancements to the Internet protocol are intended to enable scalable service discrimination in the Internet” and the resulting differentiated services “may be *either end-to-end or intra-domain*.”<sup>18</sup> Thus, to the extent Free Press asserts that the “only legitimate use” of DiffServ-based prioritization is for managing “internal traffic flows,” it is wrong yet again.

Finally, and perhaps most importantly, Free Press is wrong in its prediction that *if* paid prioritization over the Internet were permitted, ISPs would make that capability available only for their own content and to a “few select third parties” that have “the deepest pockets and biggest established brands, not new entrepreneurs, non-profits, or socially disadvantaged businesses.”<sup>19</sup> Here, again, the facts speak for themselves, and they unambiguously belie Free Press’ speculative theories. As noted, multiple providers already offer paid prioritization over Internet access today, and AT&T alone has *hundreds* of third-party customers for such services. These customers are not limited to a small cadre of “deep pocketed Internet giants” as Free Press claims they would be. To the contrary, the *substantial majority* of AT&T’s customers for paid prioritization over Internet access are small and medium-sized businesses. They include, as AT&T previously explained, “healthcare providers, community service organizations, restaurant chains, car dealers, electric utilities, banks, municipalities, security/alarm companies, hotels, labor unions, charities, and video-relay service providers.”<sup>20</sup> Notably, some of these customers are the very same types of organizations – operated by minorities and/or providing services to

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<sup>15</sup> Free Press August Letter at note 5 (*quoting* AT&T Comments, GN Docket No. 09-191, at 51-53 (Jan. 14, 2010)) (emphasis added). *See also* AT&T Reply Comments at 8-9 (AT&T offers “enterprise-grade Internet access with the capability to prioritize packets associated with performance-sensitive applications.”). *See also* Verizon Internet Dedicated Access, *available at* [http://www.verizonbusiness.com/resources/factsheets/fs\\_internet-access-internet-dedicated-access\\_en\\_xg.pdf](http://www.verizonbusiness.com/resources/factsheets/fs_internet-access-internet-dedicated-access_en_xg.pdf); Qwest Wholesale Dedicated Internet Access, *available at* <http://www.northwesternbell.us/wholesale/pcat/natdia.html>.

<sup>16</sup> Free Press August Letter at 3.

<sup>17</sup> When those packets leave AT&T’s network through a peering link with another network, the prioritization markings are typically not honored by the other network because differentiated service peering arrangements are not commonly in place today between different backbone providers. RFC 2474 expressly contemplates, however, that such backbone-to-backbone arrangements will develop pursuant to “negotiated agreement[s] between the peering domains.” RFC 2474 at 10.

<sup>18</sup> RFC 2474 at 1 (emphasis added).

<sup>19</sup> Free Press July Letter at 2.

<sup>20</sup> AT&T Reply Comments at 9.

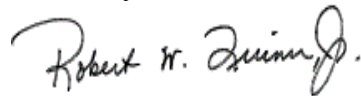
minority communities – that, according to Free Press, would never be able to purchase paid prioritization over Internet access because of alleged exclusionary business practices by ISPs.

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Free Press’s grossly inaccurate statements about paid prioritization highlight what Chairman Genachowski has aptly described as the “danger of dogma.”<sup>21</sup> They also demonstrate that the Commission should view with healthy skepticism the opinions it receives on technical Internet matters from an advocacy group with no demonstrable expertise or operational experience in those matters. Paid prioritization over Internet access is not, as Free Press maintains, some lurking future menace that would pervert the intent of the IETF. To the contrary, it was fully contemplated by the IETF, is fully consistent with the IETF’s RFCs, widely available to businesses of all sizes, and inarguably beneficial to the many customers that voluntarily choose to purchase it. Accordingly, the Commission should reject calls from Free Press and others to ban or significantly restrict the provision of paid prioritization services, which would be contrary to the goals of innovation, investment, and growth, and contrary to the interests of small, medium-sized, and minority-owned businesses.

If you have any questions or require further information, please do not hesitate to contact me directly.

Sincerely,



Robert W. Quinn, Jr.

cc: Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Meredith Attwell Baker  
Commissioner Mignon Clyburn

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<sup>21</sup> Statement of Julius Genachowski, Nominee to Serve as Chairman of the Federal Communications Commission, U.S. Senate Comm. on Commerce, Science, and Transportation, at 3 (June 16, 2009), available at [http://commerce.senate.gov/public\\_files/GenachowskiOpeningStatement.pdf](http://commerce.senate.gov/public_files/GenachowskiOpeningStatement.pdf).